



0000096928

1 BEFORE THE ARIZONA POWER PLANT A
2 LINE SITING COMMITTEE
3 IN THE MATTER OF THE APPLICATION)
4 OF ARIZONA PUBLIC SERVICE COMPANY,))
5 IN CONFORMANCE WITH THE)
6 REQUIREMENTS OF ARIZONA REVISED)
7 STATUTES SECTION 40-360, et seq.,)
8 FOR A CERTIFICATE OF ENVIRONMENTAL)
9 COMPATIBILITY AUTHORIZING THE) DOCKET NO.
10 BAGDAD 115KV TRANSMISSION LINE) L-00000D-09-0161-00143
11 RELOCATION PROJECT, WHICH INCLUDES)
12 THE RELOCATION OF A 115KV)
13 TRANSMISSION LINE BETWEEN AN)
14 EXISTING CAPACITOR BANK STATION,) CASE NO. 00143
15 0.5 MILES WEST OF THE)
16 UNINCORPORATED TOWN OF BAGDAD,)
17 YAVAPAI COUNTY, ARIZONA, AT)
18 SECTION 10, TOWNSHIP 14 NORTH,)
19 RANGE 9 WEST, G&SRB&M, AND AN)
20 EXISTING MINE SUBSTATION, THREE)
21 MILES NORTHWEST OF THE)
22 UNINCORPORATED TOWN OF BAGDAD,)
23 YAVAPAI COUNTY, ARIZONA, AT)
24 SECTION 31, TOWNSHIP 15 NORTH,)
25 RANGE 9 WEST, G&SRB&M.)

15 At: Phoenix, Arizona

16 Date: May 8th, 2009

17 Filed: **MAY 13 2009**

ARIZONA CORPORATION COMMISSION
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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard before the Arizona
3 Power Plant and Transmission Line Siting Committee, at
4 1275 West Washington Street, Second Floor Conference
5 Room, Phoenix, Arizona, commencing at 10:05 a.m. on the
6 8th of May, 2009.

7
8 BEFORE: John Foreman, Chairman

9 APPEARANCES:

10 For Arizona Public Service Corporation:

11 LEWIS AND ROCA, L.L.P.
12 By Mr. Albert Acken
13 40 North Central Avenue
14 Phoenix, Arizona 85004

15

16 Also present:

17 Mr. Paul Herndon, APS Project Director
18 Ms. Marge Haberman, Lewis and Roca
19 Ms. Tara Williams, Assistant to Chairman Foreman

20

21 COLETTE E. ROSS
22 Certified Reporter
23 Certificate No. 50658

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1 CHMN. FOREMAN: This is in the matter of the
2 application of Arizona Public Service Company for
3 authorization for the relocation of a 115 kilovolt line
4 near Bagdad, Arizona. The Arizona Corporation
5 Commission Case No. is No. 143.

6 Let me have those of you here identify
7 yourselves for the record, please.

8 MR. ACKEN: Good morning, Chairman. Bert Acken
9 of Lewis and Roca on behalf of the applicant. Along
10 with me today we have Marge Haberman of my office and
11 Paul Herndon of APS, the project manager for this case.

12 CHMN. FOREMAN: All right. Let's start with a
13 question of other parties. I presume the notice that we
14 talked about has been posted and we have had all of the
15 appropriate publication?

16 MR. ACKEN: Yes, chairman. And we are happy to
17 walk through that if you would like. I can have Paul
18 explain that.

19 CHMN. FOREMAN: You mean where you put it?

20 MR. ACKEN: Right.

21 CHMN. FOREMAN: No, that's not --

22 MR. ACKEN: Okay.

23 CHMN. FOREMAN: I just want to make sure that
24 you did what it is we said you should do last time. And
25 the key element for me right now is whether that has

1 precipitated interest by anyone in becoming an
2 intervenor.

3 MR. ACKEN: We have heard nothing from anyone.
4 I have had informal discussions with Staff, and what I
5 heard from them was that they were not planning to
6 intervene. And obviously, since they haven't and they
7 are not here, I think we can assume now that's official.
8 And we have not heard from any other party who has
9 expressed an interest.

10 CHMN. FOREMAN: Do we anticipate that anybody
11 from Bagdad or anybody from BLM, anybody from the one
12 private landowner whose interests are impacted are going
13 to want to make public comment or have any sort of
14 public involvement?

15 MR. HERNDON: Chairman, I will try to answer
16 that question. We don't anticipate anyone from the BLM.
17 The single resident in the area, Edward Kellis, we don't
18 anticipate him. There will be a representative of FMI
19 there that is planning to give public comment. His name
20 is Chris Franks. And so he is the only one that we know
21 of at this point in time.

22 CHMN. FOREMAN: All right. And as I recollect,
23 and what I have before me right now is Exhibit A-1 from
24 the application, the state, that state trust land here
25 at the bottom -- where is the BLM land that's involved

1 in this?

2 MR. HERNDON: The yellow lands are all federal
3 BLM.

4 CHMN. FOREMAN: And then the private land is up
5 here?

6 MR. HERNDON: Well, the private land is in gray.
7 The gray color on the map is private land and is
8 predominantly owned by Freeport-McMoRan.

9 CHMN. FOREMAN: But if I remember correctly, you
10 talked before about there being one other private
11 landowner.

12 MR. HERNDON: There is. Edgar Kellis has a
13 ranching operation. He owns this property and he owns
14 portions of some of these other parcels as well. But
15 the line does not cross any property, any private
16 property owned by any other entity except for FMI.

17 CHMN. FOREMAN: So the line does not go over his
18 property but it is in the vicinity?

19 MR. HERNDON: It is in the vicinity. The power
20 line is planned to kind of parallel an existing dirt
21 road in the area that he accesses to his property.

22 In other words, he has -- if we can refer to the
23 map here, this kind of is the main road in the area that
24 kind of runs all the way through the project area. As
25 you can see, he has got a spur road that goes to his

1 property. He comes up to the spur road. He intersects
2 the main road and then exits with the existing road in
3 that area. Excuse me, it is this road here.

4 CHMN. FOREMAN: Yes.

5 MR. HERNDON: So he will, he will be able to see
6 some portions of the line as he travels the access.

7 CHMN. FOREMAN: Okay. Okay. All right. That's
8 helpful to me.

9 So I assume that there will be something in the
10 record that will indicate his position. He has got a
11 writing or something like that?

12 MR. HERNDON: There is a letter that has been,
13 that he submitted to us that will be a part of the
14 record, that's true. In essence what that says is he,
15 he basically supports the project. He did ask that
16 during construction phases that, if any fences get cut,
17 that gates be installed and cattle guards be installed
18 in those locations. And APS, FMI and the BLM have all
19 agreed to those conditions.

20 CHMN. FOREMAN: Okay. And hopefully that will
21 be incorporated as a condition into the CEC.

22 MR. HERNDON: It is actually, I believe it is, I
23 know that it is in the environmental assessment as a
24 part of the mitigation measures, I believe. But we
25 wouldn't have a problem putting that in as a condition

1 in the certificate either.

2 CHMN. FOREMAN: Okay. I think that would make
3 some sense.

4 Now, we have got notice. We have got parties
5 taken care of. We have arrangements for the evidentiary
6 hearing at the Hampton Suites. Are we still thinking
7 that this is going to be a one-day affair?

8 MR. ACKEN: We certainly hope so.

9 MS. HABERMAN: Yes, we do.

10 MR. ACKEN: Let's put it this way, the direct
11 case will not take up a full day.

12 CHMN. FOREMAN: Good. How about contacting
13 Mr. Kearns or somebody over at the Commission, has that
14 been done?

15 MR. HERNDON: I did that. I called and had a
16 discussion with Mr. Kearns. We made a \$5,000 payment at
17 the time we filed the application. And he indicated to
18 me that typically the way the process works is, if they
19 believe they are going to need additional funds above
20 and beyond that, he will contact me and we will get him
21 paid very soon after that.

22 CHMN. FOREMAN: Okay.

23 MR. HERNDON: And he was satisfied with that.

24 CHMN. FOREMAN: If he is happy, I am happy.

25 MR. HERNDON: Okay.

1 CHMN. FOREMAN: Now, any problem with the
2 agenda?

3 MR. ACKEN: Chairman Foreman, we reviewed it and
4 had no comments or concerns.

5 CHMN. FOREMAN: Okay. Very good. Exhibits, I
6 am assuming you will have those available and
7 consecutively marked.

8 MR. ACKEN: Yes. One thing I wanted to ask you
9 about that. Given the fact that, fine, that you brought
10 out this map, it is labeled A-1, what we would propose
11 is to label our exhibits APS-1, APS-2, and so forth.
12 You have maps that are A-1. You have the land use
13 exhibit to the application which is A, Exhibit A. And
14 so we just think it would be helpful, it will be easier
15 for the court reporter and whoever reading the
16 transcript if we just refer to our exhibits as APS such
17 and such.

18 CHMN. FOREMAN: That's fine.

19 MR. ACKEN: Okay.

20 MS. HABERMAN: It is good to have two letters
21 for exhibit designations. That, I think, distinguishes
22 it then from the things in the other dockets.

23 CHMN. FOREMAN: Well, I can go with AP or APS.

24 MR. ACKEN: APS.

25 MS. HABERMAN: That's fine.

1 MR. ACKEN: I had a question for you if you are
2 going through the procedural order on paragraph 9.

3 CHMN. FOREMAN: Okay.

4 MR. ACKEN: The last sentence states that any
5 exhibit to which reference is made that is not offered
6 shall be provided to the court reporter for inclusion
7 unless it is withdrawn. And I just frankly didn't quite
8 understand what was meant by that. So I want to make
9 sure I understand what you are seeking from us so that
10 we can make sure we comply with that.

11 CHMN. FOREMAN: What I am seeking to, what I am
12 trying to do with these most recent modifications to my
13 procedural order is to anticipate and meet concerns that
14 have been raised to me before by members of the
15 Corporation Commission Staff. And one of the concerns
16 that was raised by one of the members of the Corporation
17 Commission Staff was that the record be complete when it
18 goes to the Commission so that the Commission will be
19 able to view everything that was viewed by the
20 Committee.

21 And the concern here is that there might be an
22 exhibit that was offered that was circulated to which an
23 objection was made and sustained and so it is not a part
24 of the record. The attorney with whom I spoke indicated
25 that she thought it would be appropriate to have the

1 exhibit before the Commission so the Commission could
2 review that and, I guess, decide whether they wanted to
3 consider it.

4 Now, that's their concern, that's their issue.
5 That's their call. I just wanted to make sure that the
6 record was as complete as we could possibly make it.
7 And so they have got to decide how they are going to
8 deal with something that's not officially part of their
9 record but part of the material that's in front of them.
10 And, as I said, it is their call as to what they
11 consider once the matter goes before them, not mine.

12 MR. ACKEN: Okay. Thank you for that
13 clarification. That's helpful.

14 CHMN. FOREMAN: I don't anticipate that's going
15 to be a problem except in larger, more complex cases.

16 MR. ACKEN: Just to confirm, like, for example,
17 one of our witnesses might reference the BLM's resource
18 management plan for this area. He is going to mention
19 it. We are not planning on introducing, discussing at
20 great detail other than to say, you know, perhaps it is
21 consistent with the resource management plan, but we
22 were not planning to put a document like that into the
23 record.

24 Now, obviously it is an administrative -- it is
25 a document from the BLM that I believe you could take

1 administrative notice if that really mattered. But what
2 I am hearing from you, you don't see a need for us to
3 bring that to the hearing and include it.

4 CHMN. FOREMAN: No, I don't, unless somebody is
5 there and somebody raises an issue about it. If, for
6 example, the witness says this document says A and, for
7 example, somebody on the Committee says, well, you know,
8 I thought this document said B, and we get a dispute
9 about that, then obviously I think it is appropriate to
10 have the document in. But absent something like that
11 occurring, if it is a published document as accessible
12 to the Commission as to anyone else, then, again, I
13 don't see a problem. If they decide that they want to
14 go outside the record and look at it, that's their
15 business.

16 MR. ACKEN: Okay, thank you.

17 MR. HERNDON: I am fine.

18 CHMN. FOREMAN: Now, again, we are going to have
19 to review the tour situation at the time we get there.
20 I had an interesting discussion with Marta Hetzer, who
21 is the head of the Arizona court reporting service. And
22 she indicated to me that some of her court reporters
23 have told her they will refuse to go on the tours. So I
24 am hoping that this is not going to be an issue in this
25 case but wanted to give you notice that, if that occurs,

1 I am not sure how we are going to deal with that.

2 If the Committee, there is significant number of
3 Committee members who want to have a tour and I decide
4 that a tour is appropriate, obviously we are going to
5 have to schedule that at sometime in the future. And
6 then how we are going to have a record made of what is
7 said on that tour is something we will have to address
8 then.

9 The only two options that I can think of are,
10 one, to record it with some sort of voice recorder.
11 Even then I think we would have to have some, quote,
12 court reporter do the recording. And the other would be
13 to hire another reporting service to take the tour.

14 So, as I said, I am hoping that that's not an
15 issue in this case. But if it is, I want to give you a
16 heads up now so that you could at least have a
17 contingency plan on that.

18 MR. ACKEN: Thank you, Chairman Foreman. Based
19 on the discussion at the prefiling, as I understood it,
20 we have not prepared tour protocol at this time, just to
21 confirm. And it is going to be our strong
22 recommendation to the Committee, to the extent that they
23 ask for our input, a tour is not necessary in this case.

24 We have developed a virtual tour, which frankly,
25 you know, Paul has been up there and has actually toured

1 the location. I think Paul could tell you that the
2 virtual tour will provide the Committee a better sense
3 of the line than any trying to follow the existing roads
4 that are out there. I would propose that what -- thank
5 you for explaining where we are at. I would propose
6 that we cross that bridge when we come to it.

7 CHMN. FOREMAN: That's what I want to do also.
8 But I just want you to be sure and understand that if
9 there are members of the Committee who want -- I don't
10 control the Committee --

11 MR. ACKEN: Right.

12 CHMN. FOREMAN: So if there are members of the
13 Committee who want to take a hike or want to drive along
14 this place, and there is some kind of issue that comes
15 up, why, we will have to address that when the time
16 comes. So...

17 MR. ACKEN: Okay. Thank you.

18 CHMN. FOREMAN: Let's see. The only other thing
19 I have got on my list then is the proposed CEC.

20 MR. ACKEN: If I may, on paragraph 15, it states
21 that we will provide transcripts to at least two public
22 libraries in the vicinity of the application. The Town
23 of Bagdad has one. And what we would propose is that we
24 just file in Bagdad and then, since it will be filed at
25 the Commission, that that would be service as the second

1 location.

2 CHMN. FOREMAN: I don't have a problem with
3 that.

4 MR. ACKEN: Okay. With respect to the CEC, we
5 will be filing that today in accordance with the
6 procedural order, proposed CEC, findings of fact and
7 conclusions of law. And so that will be filed today.
8 We are proposing to file the witness summary. We plan
9 to call two witnesses. So we will --

10 CHMN. FOREMAN: Frankly, let me stop you there.
11 The witness summaries are intended to be a device where
12 one party notifies another party of what it is going to
13 do. That's for the convenience of the other parties and
14 to prevent delay of the hearing and to prevent -- allow
15 adequate preparation and out of fairness. If there are
16 no other parties, nobody else is going to be there, then
17 as far as I am concerned, the portion of the order that
18 requires advance exchange of witness summaries and
19 exhibits is not applicable.

20 MR. ACKEN: Thank you. One less item on the to
21 do list.

22 CHMN. FOREMAN: Yes.

23 MR. ACKEN: So the last thing then is our plan
24 would be to provide the exhibits the morning of the
25 hearing to the Committee members in accordance with the

1 order.

2 CHMN. FOREMAN: Sure. They should have received
3 copies of the application. If you are going to go
4 beyond the application, and I don't know whether you are
5 going to offer the application as Exhibit 1 --

6 MR. ACKEN: We will.

7 CHMN. FOREMAN: -- then just placeholder for
8 that and then the other exhibits that are there, having
9 the place mat or some sort of sheet of, a map that will
10 help orient people is, of course, always helpful. But,
11 again, if that's offered, a copy of it should be made an
12 exhibit --

13 MR. ACKEN: Okay.

14 CHMN. FOREMAN: -- so that the record is clear
15 as to what the Committee members have seen.

16 MR. ACKEN: We are planning to put together a
17 place mat. And my recollection is that it is one of the
18 existing figures. And if not, then we will make sure
19 that it is going to be identified as a separate exhibit
20 number.

21 CHMN. FOREMAN: Good. Good.

22 MR. ACKEN: Anything else, Paul?

23 MR. HERNDON: Not that I can think of.

24 CHMN. FOREMAN: Very good. Well, I don't have
25 any other issues. So hopefully we can get this thing

1 put together and processed in the time we have got
2 allocated. Any other issues we need to address?

3 MR. ACKEN: No. Thank you for your time.

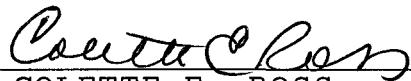
4 CHMN. FOREMAN: Great. Thanks.

5 (The proceedings concluded at 10:23 a.m.)
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1 STATE OF ARIZONA)
2) ss.
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7 I, COLETTE E. ROSS, Certified Reporter No.
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